vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5535 OF 2005

Narang Hotels & Resorts Pvt. Ltd. ... Petitioner

V/s.

Miss Margaret Gomes ... Respondent

Mr.Verma a/w Rajesh Gehani for Petitioner
Mr.V.N. Menon for Respondent

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **SEPTEMBER 22, 2005**

P.C.:

. The Petition challenges the award of the Labour Court directing reinstatement with full backwages and continuity of service from 28.9.1989. The Petitioner contends that (1) the respondent was not a workman as defined under section 2(s) of the Industrial Disputes Act; (2) although she was employed in a different organisation from 7.4.2000 to 15.3.2001, the amount which she has earned in that organisation has not been deducted from the backwages payable.

2. A perusal of the award shows that the Labour Court has correctly considered the position in law as to whether the Petitioner is a workman as defined under section 2(s) of the I.D. Act. On the evidence led

before it, the Labour Court has found that the Petitioner is a workman and, therefore, has proceeded to decide the reference. The Labour Court has found that section 25F of the I.D. Act has been breached and, therefore, awarded reinstatement. As regards backwages, there is an error in the award of the Labour Court which must be rectified. Admittedly, the respondent had worked in a different organisation from 7.4.2000 till 15.3.2001. This amount must be deducted from the backwages payable to her as per the award.

3. It is also contended that the respondent has earned from 1.4.2001 upto 16.11.2001 and that amount should be deducted from the wages payable to her. It is contended by the learned Advocate for the respondent that this is an amount earned by her for professional services and not on account of gainful employment. The Labour Cout has considered the submission and the case laws cited before it and has held, in my view, rightly that this amount cannot be deducted. Reliance placed by the Labour Court on the case of *Omprakash Goel v/s. The Himachal Pradesh Tourism Development*, **1991 LIC 1414** is apt.

4. Accordingly, the award is modifed to that extent. Petition is disposed off accordingly.